therein, is not subject to the federal law govering interstate commerce, though the telegraph company transmits the message by way of a relay station in another State. *Western Union Tel. Co.* v. *Glover* (Ala. App.), 86 So. 154; *Western Union Tel. Co.* v. *Sharp*, 121 Ark. 135, 180 S. W. 504.

When the principal case was before the Supreme Court of North Carolina, the court drew a distinction between *Bateman* v. *Western Union Tel. Co.*, *supra*, where the message could not be sent direct between the two points in the State, because there was, at that time, no line between the points which was wholly within the State. It would seem that there is more reason to regard the message a purely intrastate one where the only method of transmission between the two points necessarily carries the message beyond the limits of the State. But such is not the law. The interstate character of the message is to be tested by the actual facts as to its transmission. *Western Union Tel. Co.* v. *Bowles*, 124 Va. 730, 98 S. E. 645. Where the telegraph company sent a message to a point in the State through an exchange in another State, the message was interstate commerce, although the company had another route between the two points entirely within the State. *Taylor* v. *Western Union Tel. Co.*, 199 Mo. App. 624, 204 S. W. 818; *Western Union Tel. Co.* v. *Mahone*, 120 Va. 422, 91 S. E. 157; *Western Union Tel. Co.* v. *Bolwes*, *supra*.

But where a telegraph company, merely to evade liability under the State law, constantly transmitted messages between two points in the State by routing them through another State, the subterfuge did not render a death message an interstate one to prevent recovery under the State law for mental anguish and delay in delivery. *Watson* v. *Western Union Tel. Co.*, 178 N. C. 471, 101 S. E. 81. In *Western Union Tel. Co.* v. *Bowles*, *supra*, the Virginia court held that the interstate character of the message must be tested by the actual facts as to its transmission, and not by the motives of the company. This point is not passed on by the Supreme Court in the instant case, but the court did say, in the words of Mr. Justice Holmes, who delivered the opinion, that "the motive would not have made the business intrastate. If the mode of transmission adopted had been unreasonable as against the plaintiff, a different case would arise, but in that case the liability, if it existed, would not be a liability for an intrastate transaction that never took place but for the unwarranted conduct and the resulting loss."

The decision of the Supreme Court in this matter is in keeping with its policy to extend the meaning of interstate commerce, with a consequent diminution of the rights of the States.

FRAUD—KNOWLEDGE OF FALSITY OF REPRESENTATION—NOT ESSENTIAL TO SUPPORT AN ACTION.—The defendant was the owner of a large number of shares in a corporation which he believed to be solvent. The plaintiff owned a farm which the defendant desired to purchase and the defendant offered to exchange a portion of his stock for the plaintiff's farm. As an inducement to the plaintiff to make the exchange, the defendant represented the corporation to be a going concern and the stock to be a gilt edge security paying annual dividends. The plaintiff on the strength of the representations of the defendant traded his farm for the stock.

Although the defendant believed the representations made by him to be true at the time, they were in fact false and the stock was worthless because of the insolvency of the corporation. An action was brought to recover damages for the deceit. *Held*, the defendant is liable. *Romine* v. *Thayer* (Ind. App.), 128 N. E. 456.

To understand the correct rule in such cases it is necessary to note the distinction between an action at law for damages and a suit in equity for rescission. Where rescission is sought the courts are unanimous in declaring that it is only necessary to prove that there was a misrepresentation, then however innocently it may have been made, the contract having been obtained by misrepresentation cannot stand. *Weise* v. *Grove*, 123 Iowa 585, 99 N. W. 191; *Kathan* v. *Comstock*, 140 Wis. 427, 122 N. W. 1044, 28 L. R. A. (N. S.) 201; *Miranovitz* v. *Gee*, 163 Wis. 246, 157 N. W. 790. The test in such cases is not did the defendant know the statement to be false but did the plaintiff believe it to be true. *Wilson* v. *Carpenter*, 91 Va. 183, 21 S. E. 243, 50 Am. St. Rep. 824; *Owens* v. *Boyd Land Co.*, 95 Va. 560, 28 S. E. 950.

But as to the necessity of scienter to support an action for deceit at law, the courts are far from unanimous. One line of cases, representing the minority view, apply the rule of equity and hold that scienter is not essential. *McDonald* v. *Lasinger* (Tex. Civ. App.), 214 S. W. 829; *Mowes* v. *Robbins* (Ind. App.), 120 N. E. 51. Under this rule all that is needed to be proved is that the statements of the defendant were in fact false and were relied on by the plaintiff. *Bice* v. *Nelson*, 105 Kan. 23, 180 Pac. 206; *Rochester Bridge Co.* v. *McNeill* (Ind.), 122 N. E. 662.

The other line of cases, representing the weight of authority, is opposed to such doctrine. These cases hold that actual fraud is the foundation or, as is often said, the gravamen of the action of deceit. *Hammatt* v. *Emerson*, 27 Me. 308, 46 Am. Dec. 598; *Unitype Co.* v. *Ashcraft Bros.*, 155 N. C. 63, 71 S. E. 61. To hold the defendant liable his knowledge of the falsity of his representation or what in law is equivalent to knowledge must be alleged and proved. *Kimber* v. *Young*, 137 Fed. 744; *Inderlied* v. *Honeywell*, 84 N. Y. Supp. 333; *Cobb* v. *Peters*, 68 Ore. 14, 136 Pac. 656; *Kountze* v. *Kennedy*, 147 N. Y. 124, 41 N. E. 414, 49 Am. St. Rep. 651, 29 L. R. A. 360. Statements made without belief in their truth or made recklessly, not knowing or caring whether they are false or true, which are in fact false are equivalent to knowledge within the meaning of the last mentioned rule. *Kountze* v. *Kennedy*, *supra*; *Hadcock* v. *Osmer*, 153 N. Y. 604, 47 N. E. 923; *Johnson* v. *Holderman*, 30 Idaho 691, 167 Pac. 1030; *Bechmann* v. *Salzer*, 168 Wis. 277, 169 N. W. 279; *Jackman* v. *Northwestern Trust Co.*, 87 Ore. 209, 170 Pac. 304.

The law in Virginia is well settled that in order to support an action of deceit it is necessary to prove scienter. *Mason* v. *Chappell*, 15 Gratt. (Va.) 572; *Proctor* v. *Spratley*, 78 Va. 254.

HUSBAND AND WIFE—INJUNCTION—TORTS OF SPOUSE.—The complaint of the husband set up conduct of the wife, which the court held would amount to severe nagging, consisting of an alleged campaign against the husband of cruel and inhuman treatment by mental and physical